

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON  
On-Briefs July 23, 2002

**IN RE: THE ESTATE OF JOHN H. NAIFEH**

**A Direct Appeal from the Probate/Chancery Court for Tipton County  
No. P-1701     The Honorable Dewey C. Whitenton, Chancellor**

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**No. W2002-00062-COA-R3-CV - Filed September 20, 2002**

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This appeal arises from an order denying a surviving spouse's Petition to Set Aside Exempt Property and Year's Support. The Chancery/Probate Court of Tipton County denied surviving spouse's petition, finding that petition was filed outside the time limits established by T.C.A. § 30-2-102(g) and T.C.A. § 31-4-102. Spouse appeals. We affirm.

**Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Probate/Chancery Court Affirmed**

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which ALAN E. HIGHERS, J. and DAVID R. FARMER, J., joined.

Randall Stamps, Hendersonville, For Appellant, Niccole Naifeh

J. Houston Gordon, Covington, For Appellee, Estate of John H. Naifeh

James S. Wilder, III, Memphis, For Cathy L. Naifeh

**OPINION**

This is an appeal from an order denying a surviving spouse's Petition to Set Aside Exempt Property and Year's Support. John H. Naifeh ("Decedent") died intestate on March 13, 2000. Decedent was survived by his wife, Niccole Naifeh ("Spouse"). Spouse filed a sworn Petition for the Appointment of Administrator on March 24, 2000. On March 30, 2000, the Decedent's brothers, Henry Joseph Naifeh, Jr. and James O. Naifeh, filed a response requesting that the court appoint Henry Joseph Naifeh, Jr. as Co-Administrator of the estate. On April 3, 2000, the court entered an order appointing Niccole Naifeh and Henry Joseph Naifeh, Jr. as Co-Administrators of the Decedent's estate.

On January 29, 2001, Spouse filed a Petition to Set Aside Exempt Property and Year's Support in the amount of eighty-five thousand dollars (\$85,000.00). On February 1, 2001, Henry Joseph Naifeh, Jr. ("Co-Administrator") filed a Response to Petition to Set Aside Exempt Property

and Year's Support asserting that only thirty-five thousand dollars (\$35,000.00) was warranted in year's support. On February 12, 2001, Cathy L. Naifeh filed an Objection to the Petition of Niccole Naifeh to Set Aside Exempt Property and Year's Support, stating two grounds: (1) that the requested amount of eighty-five thousand dollars was excessive in light of the amount Decedent used to support Spouse in the year just preceding his death; and (2) that Spouse's petition was filed too late pursuant to T.C.A. § 30-2-102(g) and T.C.A. § 31-4-102. The Chancery/Probate Court of Tipton County heard arguments on November 16, 2001. On December 20, 2001, the court entered an Order Denying Petition to Set Aside Exempt Property and Year's Support.

Spouse appeals and presents two issues for review: (1) Whether the trial court erred in failing to award the Appellant one year's support; (2) Whether the trial court erred in failing to apply T.C.A. § 31-4-102(a)(2) in denying the Spouse one year's support. Because both issues involve statutory construction, we consider them together.

The pertinent part of the Year's Support Allowance statute, T.C.A. § 30-2-102, reads as follows:

(a) In addition to the right to homestead, and elective share under title 31, chapter 4, and exempt property, the surviving spouse of an intestate, or a surviving spouse who elects to take against a decedent's will, is entitled to a reasonable allowance in money out of the estate for such surviving spouse's maintenance during the period of one (1) year after the death of the spouse, according to such surviving spouse's previous standard of living, taking into account the condition of the estate of the deceased spouse. The court may consider the totality of the circumstances in fixing the allowance authorized by this section, including assets which may have passed to the spouse outside probate.

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(g) Any action to set aside the property designated in this section shall be brought within the time limits set by § 31-4-102.<sup>1</sup>

T.C.A. § 31-4-102(a)(2) reads as follows:

When the title of the surviving spouse to property devised or bequeathed by the will is involved in litigation pending so that an

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<sup>1</sup> T.C.A. § 31-4-102(a)(1) states that "[t]he surviving spouse may elect to take such spouse's elective share in decedent's property by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine (9) months after the date of death, or within six (6) months after the appointment of the personal representative, whichever limitation last expires."

election to dissent cannot be advisedly made, the survivor shall have an additional year from the date of the probate of the will within which to elect; provided, that the court may upon a proper showing further extend the time to meet the exigency of litigation, not concluded, and, that application for allowance of additional time, in either case, be made to the court, for record of its action thereon.

The fundamental purpose of a court in interpreting a statute is to give effect to legislative intent. See, e.g., *Biddle v. Town of Farragut*, 646 S.W.2d 925 (Tenn. Ct. App. 1982). The meaning of a statute is to be determined, not from special words in a single sentence or section but from the statute taken as a whole and viewing the legislation in light of its general purpose. *Tidwell v. Servomation-Willoughby co.*, 483 S.W.2d 98 (Tenn. 1972). The legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used when read in context of the entire statute and without any forced or subtle construction to limit import of the language. *City of Caryville v. Campbell County*, 660 S.W.2d 510 (Tenn. Ct. App. 1983).

We believe the legislative intent and purpose is clear and unambiguous from the plain language of the statutory provisions in question. T.C.A. § 30-2-102(g) clearly requires that any petition for year's allowance must be made within the time limits set by T.C.A. § 31-4-102. The term, "Property," as used in subsection (g) was intended by the legislature to include any form of set aside, including money. In Act of June 17, 1999, ch. 491, sec. 2 § 30-2-102, 1999 Tenn. Pub. Acts 1212, Act of June 17, 1999, ch. 491, sec. 1 § 30-2-101, 1999 Tenn. Pub. Acts 1212, and Act of June 17, 1999, ch. 491, sec. 3 § 30-2-204, 1999 Tenn. Pub. Acts 1212, the legislature amended the year's support allowance, exempt property, and homestead provisions respectively by adding the language that appears in T.C.A. § 30-2-102(g) to each. Clearly the legislature intended to impose the T.C.A. § 31-4-102 six or nine month time constraint to each provision as a whole; See also, 2 Harry Phillips & Jack W. Robinson, *Pritchard on the Law of Wills and Administration of Estates Embracing the Law and Practice in Tennessee* § 660, at 214 (5<sup>th</sup> ed. 1983 & Supp. 2001) ("In 1999, a time limit for applying for the allowance was enacted.").

In the instant case, the Decedent died on March 13, 2000 and his personal representatives were appointed on April 3, 2000. Spouse filed her Petition to Set Aside Exempt Property and Year's Support on January 29, 2001. Under the plain language of T.C.A. § 30-2-102(g) and T.C.A. § 31-4-102, the petition was filed more than nine (9) months from the Decedent's death and more than six (6) months from the date his personal representatives were appointed.

Despite this untimely filing, Spouse contends that the lower court should have taken T.C.A. § 31-4-102(a)(2) into account in order to extend the time limit for filing the petition by one year. Based on the rules of statutory construction, we do not agree with Spouse's contention. By its plain language, T.C.A. § 31-4-102(a)(2) pertains only to election to dissent by a surviving spouse from a

will.<sup>2</sup> In the instant case, Decedent died intestate. In the absence of a will, T.C.A. § 31-4-102(A)(2) is inapplicable.

For the foregoing reasons, the order of the trial court is affirmed. Costs of the appeal are adjudged against the appellant, Niccole Naifeh, and her surety.

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W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.

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<sup>2</sup> T.C.A. § 31-4-102(a)(2) refers specifically to “property devised or bequeathed by the will.”